

REMARKS

This is in response to the Official Action currently outstanding with respect to the above-identified application.

Claims 1-30 are pending in this application. Claims 1-19 were withdrawn from further consideration in view of Applicants' response to the Examiner's Restriction Requirement. Claims 29-30 previously were withdrawn from further consideration by the Examiner on the basis that Claims 29-30 are directed to a non-elected invention (Applicants having constructively elected the invention of Claims 20-28 by virtue of the issuance of a substantive action on the merits of those claims). By the foregoing Amendment, Applicants have amended Claims 20 and 25. Applicants do not propose either the addition or the cancellation of any claims by the foregoing Amendment. Accordingly, upon the entry of the foregoing Amendment, Claims 20-28 will constitute the claims under active prosecution in this application.

A version of the claims as they will stand upon the entry of this amendment is set forth above as required by the Rules.

More specifically, it is noted that in the currently outstanding Final Official Action, the Examiner has:

1. Again acknowledged Applicants' claim for foreign priority and the receipt by the United States Patent and Trademark Office of the required certified copies of the priority document.
2. Again informed the Applicants that the drawings filed on 26 September 2000 in this application are deemed to be acceptable.

3. Provided Applicants with a copy of a Notice of References Cited;
4. Acknowledged Applicant's Information Disclosure Statements of 6 February 2001, 17 December 2003 and 10 March 2004, and provided Applicants with a copy of the Forms PTO-1449 that accompanied those Statements duly signed, dated and initialed by the Examiner to confirm his consideration of the art disclosed therein ;
5. Confirmed Applicants' belief that Claims 20-28 constitute the claims currently under active prosecution in this application.
6. Rejected Claims 20-28 under 35 USC 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention in that the Examiner feels that the word each in the final subparagraphs of Claims 20 and 25 respectively could be read in a manner inconsistent with the remainder of the claim; and
7. Rejected Claims 20-28 under 35 USC 102(e) as being anticipated by the Wiser reference (U.S. Patent No. 6,385,596).

With respect to items 1-5 above, Applicants believe that further comment in these Remarks is not necessary.

With respect to item 6, Applicants respectfully submit that Claims 20 and 25 as previously submitted were clear in that the word "each" in the final subparagraph of those claims was clearly and definitely meant to indicate "each" of the following listed three elements. Nevertheless, in light of the Examiner's apparent reading of Claims 20 and 25 in a manner inconsistent with the foregoing, and in the interest of advancing the present prosecution, Applicants by the foregoing Amendment have deleted the words "each of" from the final subparagraph of Claims 20 and 25, respectively.

Applicants respectfully submit that the foregoing Amendment therefore removes the basis for the Examiner's currently outstanding rejection under 35 USC 112, second paragraph. A decision so holding in response to this communication is respectfully requested.

With respect to item 7, the Examiner's substantive rejections of elected Claims 20-28 now are based upon an alleged anticipation of those claims under the terms of 35 USC 102(e) by the Wiser reference (US Patent No. 6, 385,596).

Applicants agree with the Examiner to the extent that the Wiser reference appears to be somewhat similar to the present invention in concept and operation. Nevertheless, it is to be recognized that while the Wiser reference refers to the use of components of a so-called "passport" by a content manager 112 to authenticate a user's media player during the use of the Music Distribution Center 124 disclosed therein, Applicants have not found any **specific** disclosure in the Wiser reference explaining how this is to be accomplished.

Accordingly, it will be understood that the Wiser reference discloses that when the media player is first started up, it first searches for the user's passport (which in Wiser is stored in, or in association with, the media player). If the media player fails to detect the existence of the user's passport, a Web browser is automatically launched that directs the user to the URL of a registration page of a media-licensing center. Thereafter, a registration process takes place between the user and the media-licensing center prior to the allowance of any further communication between the media player and the Music Distribution Center. (See, Wiser at Column 13). Hence, at the outset of its operation, the Wiser apparatus compels a user to obtain a "passport" that includes both public and private keys to be used in the subsequent reproduction of encrypted music files (either free portions with the public key or purchased complete files with the private key) as well as a consumer certificate from the media-licensing center.

In addition, in the Wiser disclosure, the "passport" is monitored by a content manager that is in communication with the Media Licensing Center for the purpose of authenticating the validity of the "passport" stored on the media player at the beginning of each transaction. Thus, while consumer certificates associated with the Music Distribution Center disclosed by Wiser apparently have to be updated frequently (say every 2 to 4 weeks, see Wiser at Column 23, lines 31 to 37), the consumer certificates are valid for periods of 1 year and apparently automatically renew themselves (i.e., compel a re-registration by the user's media player at the end of their predetermined period of validity, see Wiser at Column 25, lines 40 - 48).

Consequently, in Wiser a comparison of valid user certificates is made at the content manager to determine (1) whether or not the Music Distribution Center is allowed to manage particular files, and (2) whether or not the Music Distribution Center is allowed to transfer data to the reproducing apparatus. The Examiner apparently interprets this feature of Wiser to be a determination of whether or not the reproducing apparatus (i.e., the media player) is capable of reproducing data received from the Music Distribution Center based upon reproduction apparatus specifying information (i.e., the components of a valid "passport" for the media player contained in the media licensing center as monitored by the content manager) and apparatus ID information (i.e., "passport" components stored in association with the media player seeking access to music files for the reproduction thereof).

Applicants respectfully submit, however, that the Examiner's position breaks down as it applies to the presently pending claims of this application both with regard to the claimed "control apparatus" and with respect to the claimed "CPU".

More particularly, the Examiner's position is that the "passport" embodied in a memory associated with the media player enables or disables reproduction dependent upon the determination result (i.e., whether the "passport" components stored in association with the media player match the current "passport" components for that media player present in the media licensing center in a manner such that the content manager allows the download of the music files to the media player).

If the foregoing is the case, however, it is clear that the same CPU does not control (i) the storage apparatus (in Wiser, the Media Licensing Center and/or the Music Distribution Center), (ii) the first determining apparatus (i.e., the authentication function of the Music Distribution Center) and the control apparatus (i.e., the "passport" stored in association with the media player). In other words, Applicants respectfully submit that the Wiser reference contemplates at least that the CPU controlling the media player is to be different from the CPU(s) controlling the Music Distribution Center and Media Licensing Center contrary to the present claims.

In other words, Applicants respectfully submit that since in order to anticipate a claim a single reference must be shown to disclose all of the elements of the claim at issue co-operating with one another in the claimed manner, the Wiser reference fails to anticipate the present invention.

In view of the foregoing Amendment and Remarks, therefore, Applicants respectfully submit that this application now is in condition for allowance. Accordingly, reconsideration of this application as hereinabove amended, and the allowance of Claims 20-28 in response to this communication are respectfully requested.

Finally, Applicants believe that additional fees are not required in connection with the consideration of this response to the currently outstanding Official Action. However, if for any reason a fee is required, a fee paid is inadequate or credit is owed for any excess fee paid, you are hereby authorized and requested to charge and/or credit Deposit Account No. **04-1105**, as necessary, for the correct payment of all fees which may be due in connection with the filing and consideration of this communication.

Respectfully submitted,

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